

**OPENING STATEMENT OF
CHAIRMAN FRANK D. LUCAS
SUBCOMMITTEE ON
CONSERVATION, CREDIT, RURAL DEVELOPMENT
AND RESEARCH**

**HEARING TO REVIEW THE METHYL BROMIDE
CRITICAL USE EXEMPTION (CUE) PROCESS UNDER
THE MONTREAL PROTOCOL**

Thursday, March 10, 2005

Good morning. I would like to welcome everyone to this hearing to review the process under which Critical Use Exemptions for Methyl bromide within the Montreal Protocol are granted. As part of this review, it is my hope that we will be able differentiate how this process was designed to function when it was originally agreed upon, versus what it has become.

We are all aware that the Montreal Protocol, as originally conceived, was designed to phase out the production and consumption of Methyl bromide by developed nations. However, in recognition that there might be some uses after phase-out for

which there are no technically and economically feasible alternatives available, the Parties agreed to a revision in 1997 enabling exemptions for those uses of Methyl bromide that can be regarded as critical.

In establishing the critical use exemption process, the parties to the convention agreed on specific criteria that would be used to determine what uses would qualify as critical. As stated in Decision IX/6 (*pronounced 9 slash 6*) of the protocol, a use of Methyl bromide should qualify as “critical” only if the nominating Party determines that:

- (i) The specific use is critical because the lack of availability of Methyl bromide for that use would result in a significant market disruption; and

(ii) There are no technically and economically feasible alternatives or substitutes available to the user that are acceptable from the standpoint of environment and health and are suitable to the crops and circumstances of the nomination;

This decision is important because subsequent to this modification, the U.S. Congress acted in 1998 to amend the Clean Air Act to conform our domestic policy regarding Methyl bromide to these new requirements and procedures articulated in the protocol. I include this brief history to underscore the fact that by linking U.S. domestic regulation to the Montreal Protocol, the U.S. Congress had demonstrated a degree of trust that the international process would be credible and fair.

Based on the reports that we've heard from the recent meetings in Nairobi and Prague, it would seem that the process thus far has been neither credible, nor fair.

Unfortunately, our friends in Europe, for reasons one can only speculate on; seem to want to stack the deck against us. Even more problematic is a recent decision by the State Department and the Environmental Protection Agency's Office of Air and Radiation to deny American agriculture of its critical needs and forward to the Secretariat of the Montreal Protocol a Critical Use nomination for 2007 which falls well below our actual needs.

This is extremely troubling to me. For starters, I am told that during the review process conducted by the EPA Office of Pesticide Programs where the necessary expertise exists; our constituents were led to believe that the 2007 nomination would be similar to our ultimate nomination for 2006. The reported difference between the expert review and final decision needs to be discussed. This brings me to my greater concern, that being that the Critical Use Exemption nomination process is NOT a domestic regulatory action, but instead, the responsibility of our government

to advocate for the true critical needs of its citizens. This process was embraced by the Congress to fulfill this objective and anything less than this from the Administration is completely unacceptable.

I am disappointed that the head of the EPA Office of Air and Radiation, Mr. Jeff Holmstead, who was responsible for EPA's part in this decision, was unable to attend and instead has sent Assistant Administrator Hazen from the pesticide program to defend the decision. This is not a slight to Ms. Hazen, who is an excellent witness, but it is sometimes difficult to speak for other's decisions.

We all recognize the importance of Methyl bromide. We also recognize that our continuing public investment in research to identify safe, effective and economical alternatives has not been overwhelmingly successful. The absence of these alternatives makes use of Methyl bromide, as defined by the protocol –
CRITICAL.

I recognize that this nation has a responsibility to live up to its international obligations. That said, this Congress also has a responsibility to ensure that compliance with the Montreal Protocol does not so disadvantage our farmers as to threaten the safety and security of our food, plant and forest resources.

With this in mind, I look forward to our discussion here today and hope that our witnesses will be able to shed some new light that provides us with an optimistic outlook for resolution of this issue.

Finally, I would note that DowAgrosciences and the Natural Resources Defense Council have submitted testimony for the record.